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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DANIEL G. CARDONA et al., Plaintiffs and Appellants, v. DAVID MICHAEL LAING et al., Defendants and Respondents.	B255180 (Los Angeles County Super. Ct. No. BC477844)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cary H. Nishimoto, Judge. Reversed in part, affirmed in part, and remanded.

Law Offices of Jin Nishi and Jin Nishi for Plaintiffs and Appellants.

Demler, Armstrong & Rowland, Robert W. Armstrong and Pennie P. Liu for Defendants and Respondents.

INTRODUCTION

Daniel G. Cardona (Cardona) and Dan Cardona Inc. doing business as CD Construction appeal from an adverse judgment after the trial court granted motions by defendant David Michael Laing (Laing) for nonsuit and/or judgment on the pleadings on the first day of trial before opening statement on Cardona's causes of action for negligence and slander. We conclude that the trial court erred in granting Laing's motion for judgment on the pleadings and/or for nonsuit on Cardona's two claims against Laing.

FACTUAL AND PROCEDURAL BACKGROUND

Cardona and his suspended company Dan Cardona Inc. doing business as CD Construction filed this action for negligence and slander against Laing, L&L Building Materials, Inc., and Laing's sons, David Laing and Derek Laing. In the negligence cause of action Cardona alleged that Laing negligently made physical contact with him, negligently attempted to collect a debt from him, and negligently made a claim on his contractor's bond by attempting to collect on a debt owed not by Cardona but by his son's company. In his slander cause of action Cardona alleged that Laing made "slanderous/disparaging remarks and demonstrated unprofessional behavior towards plaintiffs' business associates," and that these remarks "damaged the reputation and standing of the plaintiffs."

The proceedings that give rise to the appeal occurred on the day set for trial, before the trial commenced. After extensive discussion with counsel, the trial court granted motions by Laing for judgment on the pleadings and/or for nonsuit on the negligence cause of action because, in the court's view, the touching of Cardona's wrist "does not constitute a negligent touching by anybody's standards," "the touching contention as to negligence is without substantial evidence or any evidence that I can see," and Cardona had not pleaded damages. The trial court also granted motions for

judgment on the pleadings and/or for nonsuit on Cardona's contractor bond filing claim because "[t]here is no such action" and the claim "is without evidence . . . ."

Laing also moved for judgment on the pleadings and/or for nonsuit on the slander cause of action. Counsel for Cardona explained to the court that the claim was based at least in part on the allegation that Laing told one of his associates or acquaintances, a Mr. McOrder (with whom Cardona apparently had litigated), that Cardona was a perjurer and a liar. When the court asked counsel for Cardona how he would get this statement into evidence when he was not intending to call either McOrder or the attorney who reportedly heard Laing make the statement during a deposition, counsel for Cardona stated that he had other witnesses on his witness list who would testify on the slander cause of action. Counsel for Cardona identified two employees of Southeast Construction, which does business with Cardona, who would testify that Laing made derogatory statements about Cardona that damaged and were injurious to his reputation. Although counsel for Cardona initially was unable to articulate for the trial court exactly what these witnesses were going to say, he eventually told the court that they would testify that Laing said Cardona was "not trustworthy or including not paying his debts and should not be trusted, and Laing . . . tried to have another entity cancel their relationship with Mr. Cardona based on – based on the false allegations that Mr. Cardona had agreed to the – agreed to payments for the Specialty Materials Resources Inc."[1]

The trial court expressed concerns about whether the litigation privilege would apply, whether the statements were actually slanderous, whether evidence of the statements would be admissible, and whether Cardona's claim was really a claim for

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[1] At one point the trial court stated, "Before I could let you proceed, you have to make a showing, a 402 showing that Mr. Rob Lewis and Brian [the two Southeast Construction employees] were each personally percipient to a statement by the defendant Laing that Mr. Cardona perjured himself at the debtor exam and he is a liar." The court, however, did not conduct an Evidence Code section 402 hearing and never allowed Cardona to make an evidentiary showing.

intentional or negligent interference with prospective economic advantage, both of which would require an independent wrongful act. Counsel for Cardona then asked for leave to amend the complaint to allege such business interference claims. When the trial court asked counsel for Cardona for evidence of the interference, counsel responded, "My client's testimony." The trial court stated that Cardona's testimony would not be sufficient, and that counsel for Cardona would have to provide testimony from someone who refused to do business with Cardona because of the statements. When counsel stated that he knew there had been harm to or disruption of Cardona's business, the trial court again stated that such evidence would not suffice. Counsel for Cardona stated that Cardona's son had also witnessed instances of interference, but the son was out of town. Counsel for Cardona made a motion to continue the trial and another motion to amend the complaint, but the trial court never ruled on these motions.

The court stated, "I'm going to give you folks a few minutes to go into the jury room and resolve this case." Counsel for Laing responded that "[t]his case cannot be resolved. They already owe us $60,000. This whole lawsuit is a retaliation for trying to collect the debt. . . . And if you start to break down this case, the only claim he has is that 'Mr. Laing grabbed my arm at the county club.' That's the only claim that survives, which Mr. Laing denies and which the witnesses that Mr. Cardona said were with him and witnessed it also deny it. I took their depositions. They said no such thing took place. There's no way to settle the case." The court stated,

"I want you both to go into the jury room and discuss a disposition of this case, reasonably considering all aspects of costs and future costs and additional judgments or postjudgment issues, appeals and everything. Just go back there and see if you can resolve this case by some sort of disposition."

After the parties returned to the courtroom and reported that they had not settled the case, the court asked, "Are you close?" Counsel for Laing stated, "Not in the same universe." The court then asked counsel for Laing if he had any motions to make. Counsel for Laing then made an oral "motion for judgment on the pleadings, and/or in the

alternative motion for nonsuit based upon the offers of proof by [counsel for Cardona]." The trial court granted the motion, stating: "Begrudgingly or otherwise, I'm going to grant this nonsuit based upon the offers of proof that have been made. And the fact that this case is over or almost two years old, one year and ten months, that the information that is being offered as an offer of proof is without admissible evidence. . . . So for all the reasons and the untimeliness of the plaintiff's motion, the lack of evidence, and the fact that this case is almost two years old and we're here at trial, case having been moved for continuance previously and been denied, I will grant the motion for nonsuit on those grounds. So I don't think that there is a remaining claim. That will be the order."

The court entered judgment on January 13, 2014. The judgment states: "The court granted defendants' motion for judgment on the pleadings, motion for non-suit and motion for dismissal on November 20, 2013." Cardona timely appealed.[2]

DISCUSSION

Although the court stated at trial that it was granting a motion for nonsuit, the judgment states that the court granted a motion for judgment on the pleadings, for nonsuit, and for dismissal. We conclude that the trial court erred in granting any of these motions.

A. The Trial Court Erred in Granting Laing's Motion for Judgment on the Pleadings and/or Nonsuit on Cardona's Negligence Cause of Action

"'A motion for judgment on the pleadings, like a general demurrer, tests the allegations of the complaint or cross-complaint, supplemented by any matter of which the

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[2] Dan Cardona Inc. doing business as CD Construction also appealed from the judgment. As a suspended corporation, however, it does not have capacity to pursue this appeal. (See Rev. & Tax. Code, § 23301; *Bourhis v. Lord* (2013) 56 Cal.4th 320, 324.) Therefore, we dismiss the appeal by the suspended corporation.

trial court takes judicial notice, to determine whether plaintiff or cross-complainant has stated a cause of action. [Citation.] Because the trial court's determination is made as a matter of law, we review the ruling de novo, assuming the truth of all material facts properly pled.'" (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166; see *Eckler v. Neutrogena Corporation* (2015) 238 Cal.App.4th 433, 438.) "If the motion for judgment on the pleadings is granted, leave to amend must be granted unless the defect cannot be cured by amendment." (*Hudson v. County of Los Angeles* (2014) 232 Cal.App.4th 392, 408.)

One basis for a motion for judgment on the pleadings is statutory. Code of Civil Procedure 438, subdivision (c)(1)(B), provides that a defendant can only move for judgment on the pleadings if "[t]he court has no jurisdiction of the subject of the cause of action alleged in the compliant" or if "[t]he complaint does not state facts sufficient to constitute a cause of action against that defendant." Code of Civil Procedure section 438, subdivision (e), provides that a motion for judgment on the pleadings may not be made "if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits." The other basis is nonstatutory and "'may be made at any time either prior to the trial or at the trial itself'" (*Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650), although "[c]ase authority for the nonstatutory motion is rather thin." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶ 7:277, p. 7(I)-79.) Because nonstatutory motions for judgment on the pleadings "'circumvent procedural protections provided by the statutory motions or by trial on the merits,'" they "'risk blindsiding the nonmoving party; and, in some cases, they could infringe a litigant's right to a jury trial. [Citation.]'" (*Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1594.) Laing's motion for judgment on the pleadings, made orally on the scheduled first day trial of trial, was presumably nonstatutory.

The trial court, however, erred in granting the motion for judgment on the pleadings and entering judgment against Cardona on his negligence claim because

Cardona's allegations stated a claim, or at least could have been amended to state a claim. The complaint alleges that on January 29, 2010 Laing approached Cardona on the golf course at the Glendora County Club. The complaint alleges that, while Cardona was "playing a round of golf with his business associates," Laing "confronted Cardona regarding monies allegedly owed," "used obscene and profane language," and "did touch Cardona in an attempt to take [his] watch and did touch Cardona in an offensive matter." The complaint alleges that "Laing was negligent in making the offensive contact" and was "under the influence of alcohol when the negligent touching took place." Although the complaint did not allege the precise amount of Cardona's damages, the complaint alleged that Cardona was damaged "in [a] sum to be determined at the time of trial," which Cardona estimated "to be around $4,000,000."

These allegations, although they might also have stated a claim for battery, stated a claim for negligence, or could have been amended to do so, either in response to the motion for judgment on the pleadings or by a motion to conform to proof after the court and the jury heard the evidence of what happened on the golf course. (See *Manuel v. Pacific Gas & Elec. Co.* (2009) 173 Cal.App.4th 927, 940 [negligence is a failure to use ordinary care]; *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747 ["[n]egligence may be alleged in general terms; that is, it is sufficient to allege an act was negligently done without stating the particular omission which rendered it negligent"].) Any uncertainty on the part of Laing or ambiguity in the complaint could have been (and presumably was) cured over the two-year period the trial court noted the litigation had lasted, during which time Laing had ample opportunity to take discovery. (See *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135 [ambiguities in pleadings "can reasonably be clarified under modern rules of discovery"].) Therefore, to the extent the court granted Laing's motion for judgment on the pleadings on Cardona's negligence cause of action, the court erred. Even if the allegations regarding debt collection and making a claim on the contractor bond did not state a claim for negligence, the allegations regarding the physical encounter between the individuals did, or at least could

have been amended to do so. (See *Ellena v. Department of Insurance* (2014) 230 Cal.App.4th 198, 217 ["'[a] demurrer does not lie to a portion of a cause of action'"]; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119 ["[a] demurrer must dispose of an entire cause of action to be sustained"].)

To the extent the court granted Laing's motion for nonsuit prior to Cardona's opening statement and the presentation of any evidence, the court also erred. "On review of a judgment of nonsuit . . . we must view the facts in the light most favorable to the plaintiff. '[C]ourts traditionally have taken a very restrictive view of the circumstances under which nonsuit is proper. The rule is that a trial court may not grant a defendant's motion for nonsuit if plaintiff's evidence would support a jury verdict in plaintiff's favor. [Citations.] [¶] In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give "to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor . . . ."'" (*Casteneda v. Olsher* (2007) 41 Cal.4th 1205, 1214.) In opposing a motion for nonsuit, "plaintiffs are required to address only those shortcomings in their case that are explicitly made grounds for the motion." (*Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 209.) Where the defendant makes a motion for nonsuit after opening statement, the plaintiff "'must be given the opportunity to amend the opening statement so as to correct its supposed defects.'" (*Ibid.*; see *Panico v. Truck Ins. Exchange* (2001) 90 Cal.App.4th 1294, 1299.) On appeal we apply the same rules. (*Casteneda*, at p. 1215.)

Procedurally, a defendant may move for a judgment of nonsuit "[o]nly after, and not before, the plaintiff has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury." (Code Civ. Proc., § 581c, subd. (a); see *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 747 ["'a motion for nonsuit may not be made before completion of the plaintiff's opening statement'"].) Here, to the

extent the trial court granted Laing's motion for nonsuit on the negligence cause of action, the court erred because Laing made the motion before, not after, Cardona made an opening statement or presented any evidence. Moreover, the trial court did not give counsel for Cardona the opportunity to address the shortcomings "explicitly made grounds for the motion" or to "amend [his] opening statement in response to a subsequent motion for nonsuit." (*Lingenfelter v. County of Fresno, supra*, 154 Cal.App.4th at p. 209.) Laing made his motion for "judgment on the pleadings, and/or in the alternative motion for nonsuit based upon the offers of proof by [counsel for Cardona]," but did not specify which offer or offers of prove were the explicit grounds for the motion. By granting such a motion, the trial court deprived Cardona of the opportunity to amend his prior statements to address the grounds of the motion.

It is true, as Laing points out, that some cases have affirmed orders granting motions for nonsuit before opening statements. For example, in *Ritschel v. City of Fountain Valley* (2006) 137 Cal.App.4th 107 the court stated that "the granting of a nonsuit before opening statement is not reversible error if it is clear the plaintiff could not have prevailed even if he had presented his opening statement. [Citation.]" (*Id.* at p. 114.) The trial court in that case, however, knew that the plaintiff could not have prevailed, even before opening statements, because the court "had heard the bulk of the evidence" during a prior phase of a bifurcated trial. (*Ibid.*) The trial court here had not heard any evidence before granting Laing's pre-opening statement motion for nonsuit.

In *Atkinson v. Elk Corp., supra,* 109 Cal.App.4th 739, cited by Laing, the court held that Code of Civil Procedure section 581c, subdivision (a), precludes the defendant from moving for nonsuit before the completion of the plaintiff's opening statement, as Laing did here. (*Atkinson* at p. 747.) The court noted that the Legislature amended the statute to preclude such motions because "'[a] motion for non-suit after an opening statement is logical because a plaintiff in an opening statement must state that the evidence will prove every element of the particular case at bar. If the plaintiff doesn't promise the jury evidence of every element of the case, then it's logical and sensible for

the defendant to make the motion, and for the court to grant it. A motion for non-suit prior to the opening statement, however, is nonsensical and wasteful of court time for all concerned.'" (*Id.* at p. 748, fn. 11.) The trial court in *Atkinson*, however, had granted a nonsuit on its own motion, not on a motion for nonsuit by the defendant. (*Id.* at pp. 747-748.) The Court of Appeal called this procedure "irregular," but concluded that the plaintiff was not prejudiced in that case because, based on stipulated facts, the plaintiff was "not a buyer of consumer goods within the meaning of [the] Song–Beverly" Act and therefore, as a matter of statutory interpretation, could not maintain a claim under that statute. (*Id.* at pp. 748-758.) Here, there are no stipulated facts and no purely legal issue of statutory interpretation that the court can decide on the basis of stipulated facts. Moreover, the court in *Atkinson* also held that it was an abuse of discretion to deny the plaintiff leave to amend to allege other causes of action. (*Id.* at pp. 759-761.) The trial court here never gave Cardona that opportunity.

Wheeler v. Raybestos-Manhattan (1992) 8 Cal.App.4th 1152, also cited by Laing, involved a very different procedural situation. In that case the court reversed an order granting the defendants' motion for nonsuit before opening statement in an asbestos case based on a general order of the San Francisco Superior Court that the "theory of market share liability articulated in *Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588 . . . is inapplicable to the asbestos cases." (*Wheeler v. Raybestos-Manhattan, supra,* 8 Cal.App.4th at p. 1154.) The trial court felt that "it was bound to comply with the general order," but allowed plaintiffs "to make an offer of proof." (*Ibid.*) After recognizing that Code of Civil Procedure section 581c, subdivision (a), authorizes a motion for nonsuit only at the close of the plaintiff's opening statement, the court stated: "In this instance plaintiffs made an offer of proof in lieu of an opening statement, and we shall treat that offer as the equivalent of an opening statement." (*Wheeler, at p. 1154.*) The trial court in that case granted nonsuit based on the general order, not the evidence in the plaintiff's offer of proof. In this case, Cardona did not make a formal offer of proof, let alone make one "in lieu of" an opening statement. And, of course, the *Wheeler* court

did not reach the issue of leave to amend because the court reversed the order granting nonsuit. Thus, while there may be a place for pre-opening-statement motions for nonsuit, this case was not one of those places.

On the merits, it is obviously difficult to view, as we must, the "evidence most favorable to plaintiff . . . as true" and to disregard the "conflicting evidence," when the plaintiff has not had an opportunity to present any evidence, or even to make an opening statement about what the plaintiff anticipates the evidence will be. Because the trial court did not give Cardona an opportunity to respond to the motion, make an opening statement or present any evidence, we cannot say on this record that it is "clear the plaintiff could not have prevailed even if he had presented his opening statement." (*Ritschel v. City of Fountain Valley*, *supra*, 137 Cal.App.4th at p. 114.)

Moreover, to the extent the court was asking for, and counsel for Laing was making, a motion for nonsuit on the negligence cause of action based on an offer of proof, counsel for Cardona made a sufficient offer of proof. Counsel explained that when Laing threatened to take Cardona's watch, he negligently touched Cardona's forearm. Cardona's proposed testimony about what occurred when Laing made "offensive contact" with him when he "grabbed his wrist" in "a negligent manner" would have been evidence of a breach of the duty of care. Counsel for Laing even recognized that Cardona had a negligence claim to try to the jury based on the physical contact between the two men. What the court asked, "As far as the alleged negligence of the touching of the plaintiff's arm, is there as motion as to that?" counsel for Laing responded, "Yes, your honor. To the extent – well. I do think if I'm running in a crowd and I run into someone, I think that there is technically a negligent battery there. If there's a way around to try the issue of fact, I would like to assert it, but I don't want to assert an argument that might get reversed on appeal."[3]

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[3] After the trial court had granted counsel for Laing's "motion for judgment on the pleadings, and/or in the alternative motion for nonsuit based upon the offers of proof,"

Finally, to the extent the trial court dismissed some or all of the negligence cause of action by granting all or part of Laing's motion in limine, the court erred. During the hearing, counsel for Laing mentioned that he had filed several motions in limine. The only motion in limine in the record on appeal is Laing's motion in limine to exclude evidence not produced or disclosed during discovery, which is not a motion the court could have granted other than without prejudice. (See *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670-671.) As the court aptly noted when counsel for Laing referred to the motion in limine, "Well, I saw that, but everything in these motions is so general that I can't get anything specific out of them."

In any event, "when the trial court utilizes the in limine process to dispose of a case or cause of action for evidentiary reasons, we review the result as we would the grant of a motion for nonsuit after opening statement, keeping in mind that the grant of such a motion is not favored, that a key consideration is that the nonmoving party has had a full and fair opportunity to state all the facts in its favor, and that all inferences and conflicts in the evidence must be viewed most favorably to the nonmoving party." (*Amtower v. Photon Dynamics, Inc., supra,* 158 Cal.App.4th at p. 1595.) "[M]otions in limine also can function as 'an objection to any and all evidence on the grounds [the] pleadings [are] fatally defective' for failure 'to state a cause of action.' [Citation.] In such cases, the in limine motion 'operate[s] as a general demurrer to [the] complaints or a motion for judgment on the pleadings.' [Citations.] 'Alternatively,' where such motions are granted 'at the outset of trial with reference to evidence already produced in discovery, they may be viewed as the functional equivalent of an order sustaining a

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counsel for Laing stated, to address the "one concern [he] had," "the additional arguments that I think support the court's determination. Number one, the claimed damage is de minimus. Number two, there is no physical harm claimed. It's only emotional distress." Laing cited and cites no authority that a defendant is entitled to nonsuit or judgment on pleadings when the plaintiff's damages are small or de minimus, and counsel for Cardona did not state in his responses to the court's questions that Cardona did not suffer any physical injury.

demurrer to the evidence, or nonsuit.'" (*City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1465.) As noted, however, any order granting a motion for judgment on the pleadings or for nonsuit on Cardona's cause of action for negligence was erroneous. Therefore, an order disposing of that cause of action by a motion in limine was also erroneous.

B. The Trial Court Erred in Granting Laing's Motion for Judgment on the Pleadings and/or Nonsuit on Cardona's Slander Cause of Action

To the extent the trial court granted Laing's motion for judgment on the pleadings on the slander cause of action, the court erred. Cardona alleges in his complaint that Laing "made slanderous/disparaging remarks" about Cardona to Laing's business associates and that these statements damaged Cardona's reputation and standing. While the complaint does not allege that the statements were false, it is a reasonable inference from the allegation, liberally construed, Laing made "slanderous/disparaging remarks" that the statements were false. (See *Fiorini v. City Brewing Co., LLC* (2014) 231 Cal.App.4th 306, 315 ["[w]hen a superior court grants a motion for judgment on the pleadings, the appellate court accepts as true the factual allegations made by the plaintiff's complaint, gives those allegations a liberal construction, and determines whether the facts alleged are sufficient to constitute a cause of action under any legal theory"]; *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 551 ["[o]n a motion for judgment on the pleadings, like a demurrer, all reasonable inferences must be drawn in favor of the pleader"].) Indeed, if, as Cardona alleged and his attorney argued, the disputed debt was a debt not of Cardona's but of his son's company, then the statement about Cardona not paying his debts was false. In any event, Cardona easily could have amended his complaint to include a specific allegation of falsity. Because the slander cause of action was not incapable of amendment, the trial court abused its discretion by granting defendant's motion for judgment on the pleadings without giving leave to amend. (See *Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1111

["[a] motion for judgment on the pleadings is analogous to a general demurrer," and "[t]he trial court abuses its discretion if it denies leave to amend when there is a reasonable possibility the defect in the pleading could be cured by amendment"]; *Mendoza v. Rast Produce Co., Inc.* (2006) 140 Cal.App.4th 1395, 1402 ["[w]hen a cure is a reasonable possibility, the trial court abuses its discretion by not granting leave to amend and a reviewing court must reverse"].)

To the extent the trial court granted Laing's motion for nonsuit on the slander cause of action, the court erred. Counsel for Cardona stated that there were two employees who worked at a corporation that does business with Cardona who would testify that Laing made slanderous statements, including statements that Laing was not trustworthy, did not pay his debts, and attempted to get another entity to stop doing business with Cardona. Counsel for Cardona also stated that, in addition to the statements Laing made during the golf course incident, Laing testified in discovery about other conversations he had with "numerous people about this incident and the facts that led up to this incident."[4] This evidence, viewed in a light most favorable to Cardona, would support a jury verdict in his favor. (See Civ. Code, §§ 45a, 46; *Burrill v. Nair* (2013) 217 Cal.App.4th 357, 382 [statements "tending directly to injure a plaintiff in respect to the plaintiff's [profession, trade, or] business by imputing something with reference to the plaintiff's [profession, trade, or] business that has a natural tendency to lessen its profits" are slanderous per se]; *Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th

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[4] At one point during the hearing counsel for Cardona stated that Laing's statements on the golf course were that Laing "was going to destroy Mr. Cardona's family," and counsel did not "know if that is actually slanderous or just an intent to harm him or threaten plaintiff." The evidence of Laing's threat may or may not have included defamatory statements. The trial court, however, should have allowed counsel for Cardona to present testimony at trial, including examining Laing, about what Laing said, rather than dismiss the claim.

858, 867 ["[a] false and unprivileged oral communication attributing to a person specific misdeeds or certain unfavorable characteristics or qualities, or uttering certain other derogatory statements regarding a person, constitutes slander" (italics omitted)]; *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 346 ["[c]alling someone a liar can convey a factual imputation of specific dishonest conduct capable of being proved false . . . and may be actionable depending on the tenor and context of the statement"]; *Albertini v. Schaefer* (1979) 97 Cal.App.3d 822, 829 ["[c]alling someone a 'thief'" or a "crook" is "actionable as slander per se without proof of special damage"].) Therefore, it was not clear that Cardona could not have prevailed on his slander cause of action, and the trial court erred to the extent it granted Laing's motion for nonsuit on that cause of action. And, as noted, to the extent the court disposed of the slander cause of action in response to Laing's motion in limine, the court erred.

C. *Conclusion*

Cardona may not have had the strongest case against Laing. The allegations in Cardona's complaint may not have been a model of notice pleading (although there is no record that Laing ever challenged the sufficiency of Cardona's pleading prior to the day the trial was to begin). And Cardona may not have suffered much in the way of provable damages. But Cardona deserved to have his day in court, and, if he did not prove his claims by a preponderance of the evidence, to have a jury of his peers find against him on his claims, or, at a minimum, to have the court grant a directed verdict at the close of his case. The opportunity to be heard is a fundamental cornerstone of our justice system, and the trial court's day-of-trial rulings deprived Cardona of that opportunity.

Cardona does not argue, however, that the trial court erred in entering judgment in favor of Laing's sons, David Laing and Derek Laing. We therefore affirm the judgment in favor of those two individual defendants.

DISPOSITION

The judgment is reversed as to Daniel Cardona's claims against David Michael Laing and affirmed as to Daniel Cardona's claims against David Laing and Derek Laing. The appeal by Daniel Cardona Inc. doing business as CD Construction is dismissed. Cardona is to recover his costs on appeal from David Michael Laing.

SEGAL, J.

We concur:

PERLUSS, P. J. ZELON, J.